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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/265,082	03/09/1999	ROY GREEFF	MI40-177	4103

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SPOKANE, WA 99201-3828

EXAMINER

ZIMMERMAN, BRIAN A

ART UNIT	PAPER NUMBER
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2635

DATE MAILED: 11/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/265,082

Applicant(s)

GREEFF ET AL.

Examiner

Brian A Zimmerman

Art Unit

2635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-20 and 35-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-20 and 35-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other: \_\_\_\_\_

**EXAMINER'S RESPONSE**

**Status of Application**

In response to the applicant's amendment received on 7/8/02. The examiner has considered the new presentation of claims and applicant arguments in view of the disclosure and the present state of the prior art. And it is the examiner's position that claims 14-20,35-49 are unpatentable for the reasons set forth in this office action:

***Claim Rejections - 35 USC § 102 and § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 14-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hasegawa (5355519) and Baldwin (4075632).

The difference between the invention of claims 14-20 and the Hasegawa reference is the use of the phase shifter in an interrogation system.

It is the examiner's position that this limitation exists only in the preamble and therefore is not afforded weight in the claimed invention.

However, in the alternative, Baldwin teaches the use of a phase shifter in a backscatter interrogation system. See figure 2 and description of the modulation techniques including col. 5 lines 5+. This permits the use of phase modulation in a transponder interrogation system. As learned from the disclosure of Hasegawa, an

Art Unit: 2635

infinitely variable phase shifter would increase the accuracy in the simulation and subsequent transmission of a radio signal.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the phase shifter of Hasegawa in the interrogator of Baldwin to permit the use of phase modulation in the interrogation system.

2. Claims 35-44, 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasegawa (5355519) and Baldwin (4075632).

Baldwin teaches the use of a phase shifter in the interrogator of a backscatter communication system. See figure 2 and description of the modulation techniques including col. 5 lines 5+. This permits the use of phase modulation in a transponder interrogation system.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the phase shifter of Hasegawa in the interrogator of Baldwin to permit the use of phase modulation in the interrogation system.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

Art Unit: 2635

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 45 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 24,45 and 59 of U.S. Patent No. 6192222 in view of Hasegawa and Baldwin.

Hasegawa and Baldwin are applied for their teachings as discussed above, with regard to claims 14,35,42 and 46. The '222 patent (claims 27,45,59) includes limitations that cover adjusting the phase of in a manner that provides the maximum reduction of amplitude of the modulated radio signal. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the above discussed system with a phase shifter to maximum reduction of amplitude of the modulated radio signal to provide a reduction of unwanted signal(s).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 42-49 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the

Art Unit: 2635

application was filed, had possession of the claimed invention. Support for the newly claimed limitations could not be found in the specification as originally filed.

### ***Response to Arguments***

Applicant's arguments filed 7/8/02 have been fully considered but they are not persuasive.

The applicant argues that they have electronically searched the Hasegawa reference and not found any of the claimed elements. While, it may be true that the exact term(s) (for example: ***local continuous wave signal***) may not be specifically found in Hasegawa reference, one of ordinary skill in the art is well aware that terms are often creatively used in the art when defining the same or similar elements. Upon a full reading of the reference, it is clear that a transmitter and receiver pair is disclosed, col. 3 lines 5+. It is interpreted that <sup>the</sup> a simulated signal of the reference is equivalent to the local continuous wave signal broadly claimed, also in col. 3. Furthermore, the reference invention is disclosed as being directed to a radio communication system.

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

Art Unit: 2635

the art. There is no requirement that the motivation be explicitly stated in any of the references. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, an infinitely variable phase shifter would increase the accuracy in the simulation and subsequent transmission of a radio signal.

The applicant argues that since Baldwin already includes a phase shifter, one of ordinary skill in the art would not try to improve the system by looking for another phase shifter. An infinitely variable phase shifter would increase the accuracy in the simulation and subsequent transmission of a radio signal and therefore provide motivation for one of ordinary skill to modify the Baldwin system.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


Art Unit: 2635

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A Zimmerman whose telephone number is 703-305-4796. The examiner can normally be reached on Off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Horabik can be reached on 703-305-4704. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.



Brian A Zimmerman  
Primary Examiner  
Art Unit 2635

BaZ  
November 21, 2002